IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10554 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

O N G C

Versus

WORKMEN, GUJARAT PETROLEUM EMPLOYEES UNION & Ors

Appearance:

MR RR MARSHALL for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

..... for Respondents No. 2,4,7

NOTICE SERVED for Respondents No. 3,6

NOTICE UNSERVED for Respondent No. 5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 07/02/2002

ORAL JUDGEMENT

#. Rule. Mr. T.R. Mishra, learned advocate appearing for the contesting respondent no. 1 waives service of

notice of rule. So far as the rest of the respondents are concerned, they are formal respondents and with the consent of both the contesting parties, the matter is taken up for final hearing today.

#. The petitioner - Oil & Natural Gas Corporation Limited (for short "ONGC"), has challenged the order dated 24th September, 2001 passed by the Industrial Tribunal, Ahmedabad below application exh. 51 in Reference (IT) No. 35/98 whereby the Industrial Tribunal has given direction to the first party to produce the documents narrated in item no. 4 of the application and so far as the rest of the items are concerned, the application is dismissed. Before I consider the merits and legality of the order, it is worthwhile to note that the first party is representing not only of ONGC but other contract labourers also whose names are mentioned in the application from item nos. 4 to 9.

#. Perusal of the order dated 24.9.2001 shows that it is joint and composite order and is not against the ONGC only. Perusal of the application at Annexure : A shows that in the title of the first party, officers of the ONGC are upto serial nos. 1, 2, 3 and other parties whose names are mentioned from sr. nos. 4 to 9 are contract labourers and it is a matter of fact that these contract labourers against whom direction is also given for producing the documents as per the order of the Industrial Tribunal, have not chosen to challenge the order passed by the Industrial Tribunal and therefore, when it was pointed out to Mr. Marshall, learned advocate appearing for the petitioner that the order of the Industrial Tribunal cannot be quashed at the instance of the ONGC against the contractors also because the contractors have not chosen to challenge the said order. At this stage, Mr. Marshall submitted that this petition is restricted to giving direction to ONGC for producing the documents and therefore, he restricts his claim to that extent only. In that view of the matter, this Court will have to examine as to whether the Industrial Tribunal was justified in giving direction to ONGC to produce the documents narrated at item no. 4 as per the impugned order or not.

#. In support of the petition, Mr. Marshall, learned advocate appearing for the petitioner submitted that as per the requirement of Rule 78 of the Contract Labour (Regulations & Abolition) Central Rules, 1971 (for short "the Rules"), these documents which are referred to at item no. 4 of the application are required to be maintained by every contract labourer and not by

principal employer namely the ONGC. He therefore submitted that the Industrial Tribunal has not examined and considered the said aspects of the case and so far as it relates to the ONGC, when under the requirement of the statute, ONGC is not required to maintain the record and the liability to maintain such record is with the contractor and when such documents are not in possession of the principal employer, the principal employer cannot be directed to produce the documents which are not even in his custody. I find substance in the contention raised by Mr. Marshall, more particularly because if we see Rule 78 of the Rules, it is clear that the maintenance of the muster roll, wage register, deduction register and overtime register are to be prepared and maintained by every contract labourer and not by principal employer. When the ONGC which is the principal employer under the the Statute is not required to maintain the documents as referred under Rule 78 of the Rules and when it is the liability of the contractor to maintain such record, it cannot be said that these documents would be in possession of the principal employer namely the ONGC. Mr. Marshall also drew the attention of this Court that in the impugned order itself when the Industrial Tribunal has recorded the contention of the petitioner ONGC that these documents which are at item no. 4 can be in possession of the contract labourer and the ONGC can not be directed to produce the same since such documents cannot be and are not in possession of the ONGC. It is true that while giving directions to the parties to the proceedings to produce certain documents which may be relevant for the purpose of adjudication of the case, the Court or the Tribunal has power to give such direction. But at the same time, while giving such direction, it is necessary that the Tribunal should first arrive at the conclusion that such documents are expected to be or in actual possession of the party concerned. Unless such finding is arrived at, the direction cannot be given to either party to produce the documents which may not be in actual possession of such party. Under the circumstances, the order of the Industrial Tribunal to that extent so far it relates to giving direction to ONGC is erroneous on the face of it. At this stage, Mr. T.R. Mishra, learned advocate appearing for the contesting respondent Union contended that under Section 21(2), officer of the principal employer has to certify the record which is maintained by the contractor. Mr. Mishra further contended that as per the requirement of Rule 81(3) and Rule 82 of the Rules, the principal employer has also to furnish return to the competent authority annually which would incorporate the details as provided under Form Nos. XXIV

and XXV. Mr. Mishra therefore contended that this Court, while quashing the order of the Industrial Tribunal may give such direction to the ONGC to produce the annual returns which were maintained and forwarded by the ONGC in capacity as principal employer to the authority concerned. I am afraid this contention can be accepted. Firstly, this Court is exercising the power under Article 227 of the Constitution of India and therefore, the scope of judicial review is restricted to legality and validity of the order passed by the Tribunal and secondly, when such request is not even made by the respondent Union before the Industrial Tribunal, I am of the view that such direction cannot be given in a petition preferred by the ONGC challenging the legality and validity of the order. If the respondent Union desires such documents to be produced, then in that case, proper course would be that they may apply to the Industrial Tribunal for such purpose and the Tribunal, after hearing the ONGC can pass appropriate orders, but such directions cannot be given in the present petition. In view of the above, I find that the order of the Industrial Tribunal dated 24.9.2001 so far as it operates against the ONGC is illegal and deserves to be quashed. In the result, the petition is allowed to the aforesaid extent. It is made clear that the order dated 24.9.2001 passed by the Industrial Tribunal below application exh. 51 shall operate qua the contractor and it will not operate qua ONGC in capacity as principal employer. The petition is allowed accordingly with no order as to costs.

[JAYANT PATEL, J.]

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